

OFFICE OF BACKGROUND INVESTIGATIONS

PROCEDURES FOR CONDUCTING BACKGROUND INVESTIGATIONS REQUIRED BY § 63.2-1726 OF THE *CODE OF VIRGINIA* ON EMPLOYEES, VOLUNTEERS, AND CONTRACTUAL SERVICES PROVIDERS AFFILIATED WITH CHILDREN'S RESIDENTIAL FACILITIES

April 2019

Anyone who is hired or is approved to provide volunteer or contractual services cannot work until the criminal history background check and central registry search has been received by the facility.

Children's residential facilities cannot hire anyone who has:

- a conviction or pending charges for an offense under clauses (i), (ii), (iii), or (v) of barrier crime definition in Code § 19.2-392.02
 - a conviction or pending charges for an offense under clause (iv) within five years prior to application for employment/volunteer/contractual services or is still on probation/parole or has failed to pay court fees for offenses under clause (iv)
 - founded case of child abuse or neglect
-

I. OFFICE OF BACKGROUND INVESTIGATIONS (OBI) GENERAL INFORMATION

A. HOURS OF OPERATION

OBI is staffed Monday – Friday from 8:30 a.m. to 4:00 p.m. Messages may be left on voicemail at other times and calls will be returned the next business day.

B. POINTS OF CONTACT

OBI Supervisor – Kristen Eckstein
Telephone: 804-726-7099
Email: kristen.eckstein@dss.virginia.gov

Criminal Background Investigations:

Supervisor – Christine Goulding
Telephone: 804-726-7091
Email: christine.goulding@dss.virginia.gov

Supervisor - Cheyenne Perry
Telephone: 804-726-7387
Email: cheyenne.perry@dss.virginia.gov

General Questions:

804-726-7884

Criminal Backgrounds Fax:

804-726-7095

Child Protective Services Central Registry

Supervisor – Lois Kennedy

Telephone: 804-726-7766

Email: lois.kennedy@dss.virginia.gov

Supervisor – Cheyenne Perry

Telephone: 804-726-7387

Email: cheyenne.perry@dss.virginia.gov

General Questions:

804-726-7544

Billing Questions

804-726-7549

C. MAILING ADDRESS

Virginia Department of Social Services
Office of Background Investigations
801 East Main Street, 6th Floor
Richmond, VA 23219

NOTE: Please do not address mail to the Treasurer of Virginia.

D. OBI WEBSITE

OBI forms and procedures may be found at:

http://www.dss.virginia.gov/family/children_background.cgi.

II. CHILD ABUSE AND NEGLECT SEARCH

A. The following should be submitted to OBI

- Request for Search of the Central Registry and Release of Information Form
http://www.dss.virginia.gov/files/division/licensing/background_index_childrens_facilities/founded_cps_complaints/032-02-0151-12-eng.pdf
- \$10 fee for each search

Money orders, company/business checks, or cashier's check should be made payable to the Virginia Department of Social Services.

NOTE: Personal checks are not accepted for the central registry search.

B. Returned check fee

If a check is returned for non-sufficient funds, there is a \$50 charge. The facility will be notified of the returned check by telephone and/or letter. Since the bank requires that repayment be made within 10 days, the facility should take immediate action to have a replacement bank check (guaranteed funds) or money order issued to cover the background investigation fee and returned check fee of \$50.

If a check is returned for insufficient funds, all future payments for background investigation requests must be accompanied by either a money order or a cashier's check.

C. Important information regarding the Request for Search of the Central Registry and Release of Information Form

- After May 1, 2018, individuals will receive a results letter instead of the search form indicating if the person for whom the search was conducted was found in the central registry system. This letter will be emailed to the requesting agency.
- If a record of a founded complaint is located, the results letter will include information on which local department of social service (LDSS) office made the finding. You should contact the LDSS to obtain specific information about the complaint.
- Contact your licensing inspector if you are unsure how the information you obtained will impact hiring or retaining individuals.

Form requirements

- Print the form 2-sided document
- Use a separate blank page if additional space is needed for listing spousal and children's names
- Complete all fields and required information on the form
- Print legibly
- Have the form notarized
- Ensure the applicant's signature appears on the form
- Follow the directions when completing the form
- Mail the completed form with payment to:
Virginia Department of Social Services
Office of Background Investigations - Search Unit
801 East Main Street, 6th Floor
Richmond, VA 23219-2901

Actions to avoid

- Do not use white out or cross out information on the form
- Do not write on or cover the bar code
- Do not write in the margins
- Do not copy the form and make it smaller than 8" x 10"
- Do not staple the form
- Do not send extra documents along with the form (e.g. copies of birth certificates, marriage licenses or driver's licenses - such items will not be returned)

If the search form is not filled out correctly, it will be returned. Forms will now be scanned into the new system, so the completed form must be easy to read, with no additional marks or documents attached.

III. FACILITY POINT OF CONTACT FOR CRIMINAL BACKGROUND INVESTIGATIONS

Each facility should designate one criminal background investigation contact person. All correspondence and questions from OBI will be directed to this contact. In order to keep contact lists and addresses current, any changes in the designated point of contact should be reported to OBI.

IV. FINGERPRINT BASED CRIMINAL HISTORY SEARCH

As of January 2018, OBI no longer accepts initial Criminal Background Investigation Request Forms and fingerprint cards from agencies. The fingerprinting vendor, Fieldprint®, will collect all identifying information on the applicant, collect fees, take prints, and electronically submit the information to the Virginia State Police (VSP), the Federal Bureau of Investigations (FBI), and OBI. OBI staff will continue to screen criminal history results received from VSP and FBI in order to provide the requesting agency a determination of eligibility on the individual being searched.

A. Cost of fingerprinting

Employees	\$59.00
Volunteers	\$39.00

The total cost will cover fees for Fieldprint, Virginia State Police, FBI, and OBI. Payment will be due when an individual signs up for a fingerprinting appointment online.

B. Registration

All individuals required to submit a fingerprint based criminal history search must register online with Fieldprint®. Below is a step-by-step guide to schedule a Fieldprint® appointment for a fingerprint-based criminal background check.

1. Access the Virginia Fieldprint® website at <https://fieldprintvirginia.com/>
2. Click “Schedule an Appointment” button.
3. Follow the on-screen instructions to register with Fieldprint® or log-in if you are an existing user.
4. On the “Reason” screen enter your Fieldprint Code. You cannot continue to schedule the appointment without this Code. If you lose your Fieldprint Code, contact OBI at 804-726-7884.
5. Complete demographic information.
6. Under “Additional Information”, enter your “Facility ID” number found in the letter from OBI. You cannot continue to schedule the appointment without this ID. If you lose your Facility ID, contact OBI at 804-726-7884.
7. If you have lived out of state in the past five years enter each location and dates starting with the most recent. If you have had more than five addresses out of state in the past five years enter the five most recent addresses.

8. Make sure that the “Facility ID” you entered is correct and the facility you are being fingerprinted for is shown. If it is not correct, select back and re-enter the ID or contact the person who gave you the number.
9. Read through the “Authority for Release of Information”. Check the “I Agree” box and provide information requested.
10. The “Find a Location” screen will have your home address. If you want to use that address select the “Find”. If you want to enter a different address (ex. your work address) enter that address to find Fieldprint® locations nearest to you.
11. Schedule an appointment by selecting a location, date, and time and selecting the “Schedule” button. You will see a pop up, select “Continue” if you are going to keep the appointment and “Cancel” if you want to choose a different time.
12. Print appointment confirmation (includes the Fieldprint® Registration number located above the appointment date & time) and bring it along with two forms of identification (one must be a picture ID). The appointment cannot be completed if these items are not present.

Acceptable Primary IDs include:

State-Issued Driver’s License	State-Issued Non-Driver’s License ID Card
U.S. Passport	Military Identification Card
Work Visa with Photo	Foreign Passport
DOD Common Access Card	Foreign Driver’s License

Acceptable Secondary IDs include:

Credit Card/Debit Card	Bank Statement/Paycheck Stub
Birth Certificate	Marriage Certificate
Citizenship or Naturalization Certificate	Electric/Utility Bill
School ID w/Photograph	Vehicle Registration/Title
Voter Registration Card	Draft Record
Social Security Card	Transportation Worker ID Credential (TWIC Card)
Native American tribal document	Permanent Resident Card (I-551)

Rescheduling fees will be assessed if you fail to appear for your appointment or cancel within 24 hours of the scheduled appointment time.

Fieldprint codes and Facility IDs are sent to the facility point of contact for criminal background investigations. Contact OBI at 804-726-7884 if there is a question regarding the code or the facility ID.

If you have questions about scheduling an appointment, call Fieldprint at 877-614-4364.

C. REPRINTS

If fingerprints are rejected by the State Police or FBI, Fieldprint will contact the individual to schedule a new appointment. Reprints must be taken within two weeks after receiving a rejection notice in order to complete the background investigation process and be in compliance with state law.

There is no fee for reprints.

Note: If an individual is no longer under consideration by the CRF, it is mandatory that OBI be notified in order to close the case.

D. NOTIFICATION OF NAME SEARCH

If fingerprints continue to be rejected by the Virginia State Police or by the FBI, OBI will request a name check. If this happens, the provider will be notified. Once the request is approved and the name check has been completed, a final determination letter will be sent to the agency for retention in the agency file.

V. EVALUATING CRIMINAL BACKGROUND INVESTIGATION RESULTS

OBI is responsible for screening the Virginia and FBI records for facilities. Only public facilities are allowed by law to receive a copy of the actual results of the FBI fingerprint check.

Facilities are notified of the individual's status based on evaluation of the information received from VSP and the FBI. OBI staff will screen the results against the barrier crimes list and determine if an individual is eligible to work with children. You can find a copy of the barrier crimes list here:

http://www.dss.virginia.gov/files/division/licensing/crf/intro_page/background_investigations/guidance_procedures/barrier_crimes_crf.pdf

A. DETERMINATION LETTERS

OBI will email a determination letter to the provider and the individual that submits fingerprints to let them know if the individual is eligible or not eligible to work with children.

There are different types of letters.

- Eligible –eligible to work with children
- Not Eligible –not eligible to work with children
- Unable to Determine – there is not enough information to determine if a person is eligible or not eligible to work with children

If there is a Virginia criminal record, it will be mailed to the provider with a not eligible or unable to determine letter.

The following are reasons why a not eligible letter has been sent:

- An individual has a conviction of or pending charges for an offense under clauses (i), (ii), (iii), or (v) of barrier crime definition in Code § 19.2-392.02

- An individual has a conviction of or pending charges for an offense under clause (iv) within five years prior to application for employment/volunteer/contractual services or is still on probation/parole or has failed to pay court fees for offenses under clause (iv)
- Registry on the Sex Offender and Crimes Against Minors Registry

If the facility receives a "Not Eligible" letter on an individual, the individual shall not be hired by the facility and shall not perform volunteer or contractual services at the facility.

Anyone with a founded case of child abuse or neglect shall not be hired by the facility and shall not perform volunteer or contractual services.

B. UNABLE TO DETERMINE/ADEQUATE INFORMATION IS NOT AVAILABLE LETTER

This letter is sent when an individual was either charged or arrested and OBI was unable to obtain a disposition or OBI was unable to determine the nature of the arrest. OBI has researched through all available state and local record keeping systems and has not been able to determine whether the applicant was convicted of the crime. Adequate information to make a determination is not available when:

- The disposition has not been reported by the court to the State Police/FBI.
- The record has been purged or destroyed by the court.
- OBI is unable to comply with the court's requirements for researching its records and releasing the disposition. The individual may or may not have been convicted of the crime.
- OBI was unable to determine if a listed arrest/conviction is a barrier offense because of lack of information shown on the arrest history and inability to obtain clarifying information from courts and law enforcement agencies.

C. HOW A FACILITY SHOULD RESPOND WHEN RECEIVING AN "UNABLE TO DETERMINE/ADEQUATE INFORMATION IS NOT AVAILABLE" LETTER

The "Unable to Determine/Adequate Information is Not Available" letter is a final determination letter from OBI. The facility should contact OBI when they receive the letter to clarify what information is needed.

If the charge is listed on the Virginia record, OBI can discuss and confirm the charge and information. After the charge is confirmed with OBI and the facility is aware of what information is needed from the individual, the facility can either take a statement from the individual or the facility can write the statement and have the individual sign and date it. The facility can indicate in the statement that OBI had been contacted and the charge was confirmed.

The facility should list all details from the arrest record such as the charge, offense date, jurisdiction, etc. Document all information that is needed based on what the individual discloses. (Ex. a disposition may

be missing from the record due to the age of the charge or information on a particular charge may be missing.) If a charge is old, the courts do not always have information so this is why OBI has to send this type of letter. In Virginia, lower courts such as General District and Juvenile and Domestic Relations destroy their records after 10 years.

The only information the facility will be able to gather is what the individual is providing to them. The facility can also consult internally with a supervisor or attorney that represents the facility in order to make a final hiring decision.

If at any point, a barrier conviction is disclosed, the facility must treat the case as "not eligible".

If a barrier conviction is not disclosed, the facility will have discretion to make the final hiring decision based on all information gathered. The statement should be attached to the determination letter. This supports the determination letter and provides documentation to anyone reviewing the decision.

Sometimes the determination letter is generated due to charges on the arrest history such as "fail to appear" or "contempt of court" charges. These are not barriers, but OBI researches the underlying charge to verify/confirm the original charge that initiated the fail to appear or contempt to make sure the original charge was not barrier related.

If the determination letter was generated due to this type of charge, the facility will need to talk with the individual and take a statement to confirm the original/underlying charge that caused the contempt/fail to appear to be issued. If the original/underlying charge is not a barrier, the facility has final discretion. If a barrier crime is disclosed, the facility needs to find out what happened to the charge and document all details.

If a barrier conviction is disclosed, the facility must treat the case as "not eligible".

If the determination letter was sent based on a charge that is not listed in the Virginia record, OBI will not be allowed to release information to a private Children's Residential Facility. Please complete the following steps:

- Provide the individual with a copy of the Barrier Crimes list.
http://www.dss.virginia.gov/files/division/licensing/crf/intro_page/background_investigations/guidance_procedures/barrier_crimes_crf.pdf
- Advise the individual to request a copy of the FBI record by going to the FBI website (<https://www.fbi.gov/>). It can take 2-3 weeks to receive the record.
- When the individual receives a copy of their record from the FBI, if the person chooses to share their record, the facility can contact OBI to discuss what is listed in the record. At that time, OBI can offer further guidance.

A facility should not make a final hiring decision until the charge/charges in question have been verified prior to taking the statement. Arrest records from individual states are not the same as the office FBI record.

VI. REQUESTING A COPY OF THE CRIMINAL HISTORY RECORD

The facility cannot disseminate the record to the individual.

A. FBI

If an individual wants to request a copy of their FBI criminal history record, they can visit the FBI website at <https://www.fbi.gov/>.

B. VIRGINIA STATE POLICE

If an individual wants to request a copy of their Virginia criminal history record, they can visit the Virginia State Police website at: http://www.vsp.virginia.gov/CJIS_Criminal_Record_Check.shtm

VII. CHALLENGING CRIMINAL BACKGROUND CHECK RESULTS

If, after reviewing the identification record, the individual believes it is incorrect or incomplete in any respect and wishes changes, corrections, or updating of the alleged deficiency, he should make direct contact with the agency (court, law enforcement agency, etc.) that contributed the questioned information.

A. FBI

If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record and it comes to the individual's attention that he is not the person of the record, the individual may initiate a challenge of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>

B. VIRGINIA STATE POLICE

In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the Central Criminal Records Exchange, and he is not the person of the record, then the individual may initiate a challenge of the information contained in the record. An individual should report this information to a local sheriff, police or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record. The challenge procedures can be found at: http://www.vsp.state.va.us/CJIS_CCRCRE.shtm#Challenge_Record.

The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letter head that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address:

Manager
Central Criminal Records Exchange
Virginia Department of State Police
P.O. Box 27472
Richmond, VA 23261-7472

Within five work days, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modification(s) taken, if applicable.

Reports to a facility from OBI can be modified only after the individual challenges his record, it is corrected by the court or law enforcement agency, and the correction reported by the court/agency to the State Police or FBI. The individual must then submit fingerprints in order to obtain an accurate record.

If an applicant admits to having a barrier conviction or pending barrier charge, he is not entitled to proceed with the challenge procedure. In addition, § 63.2-1726 of the *Code of Virginia* does not contain any provision for an appeal or challenge.

Applicants should not be told to contact OBI for more information. The facility should provide the individual with a copy of the barrier crimes and refer them to either the State Police or FBI websites to request a copy of their criminal record.

VIII. SAFEGUARDING AND DISPOSING OF CRIMINAL HISTORY RECORDS

State and Federal laws prohibit secondary dissemination of criminal history records by facilities. Facilities are permitted to let an individual see the results of the State Police and FBI fingerprint checks but are not permitted to furnish copies to anyone.

Facilities must safeguard both the records and their content. Records must be destroyed when they have served the purpose for which they were obtained. They may not be maintained in personnel files unless they are kept for a specific reason for documentation purposes and they must be kept in a secured area. Information is obtained from the State Police and FBI for the specific purpose of determining whether to use the individual as an employee, a contractual service provider, or volunteer.

IX. DOCUMENTATION TO BE RETAINED BY FACILITIES

After the results of the Virginia State Police and the FBI fingerprint checks are sent to the facility (or reprints are discontinued) the criminal investigation is considered closed. To document that it has complied with the requirements of state law(s), facilities should keep the following documents after an investigation is closed:

- Determination letters with the results of the State Police and FBI fingerprint checks
- Request for Search of the Central Registry and Release of Information Form
- Disclosure Statement

These documents may be retained in the individual's personnel file. The facility is responsible for safeguarding the documentation to prevent dissemination.

X. MULTIPLE PROGRAM POLICY

Facilities are reminded that criminal background investigations conducted under § 63.2-1726 of the *Code of Virginia* can legally be conducted only on employees, volunteers, and contractual service providers who will be affiliated with a children's residential facility operated or regulated by the Departments of Behavioral Health and Developmental Services or Social Services.

Organizations that operate multiple programs should not request OBI to process request for criminal background investigations on individuals under § 63.2-1726 who work for other programs sponsored by the organization, but who have no connection to the children's residential program.

XI. COMMUNITY SERVICE BOARD (CSB) BACKGROUND INVESTIGATIONS

On July 1, 1997, § 37.1-197.2 of the *Code of Virginia* concerning background investigations on CSB employees became effective. As a result of this law, CSB's must conduct fingerprint checks on all direct care employees.

Virginia Code § 63.2-1726, under which OBI conducts criminal background investigations, stipulates that fingerprint checks will be done on all employees, as well as, volunteers and contractual service providers who are alone with one or more children on a regular basis.

All CSB background investigations on volunteers and contractual service providers who work in a children's residential facility and who are alone with one or more children on a regular basis, and employees who work in a children's residential facility who do not provide direct care must be processed through OBI.

CSB's may process criminal background investigations on direct care employees who are employed at the children's residential facility either through OBI or through the CSB procedure.

XII. DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES (DBHDS) BACKGROUND INVESTIGATIONS

Effective July 1, 1998, all DBHDS licensed providers are required to conduct criminal background investigations on all applicants who accept employment in compensated direct consumer care positions

as required by §§ 37.1-416 and 37.2-314 of the *Code of Virginia*. By submitting background requests to the OBI, facilities regulated by DBHDS will be meeting the requirements for §§ 37.2-416, 37.2-314, and 63.2-1726 of the *Code of Virginia*.